

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 19, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT SAMUEL TILLMAN (01),

Defendant.

No. 4:19-cr-06007-SMJ-01

PROTECTIVE ORDER

Before the Court, without oral argument, is the United States' Motion to Disclose Pre-Indictment Pleadings for Discovery But Not Unsealing and for Protective Order, ECF No. 28. The Government informs the Court that it must disclose information in order to meet its disclosure obligations. *Id.* However, it requests that the search warrants relating to the investigation in this case, which have been filed under seal, remain sealed to public access in order to protect ongoing investigations and alleviate safety concerns. *Id.* at 2. The Government seeks authorization to disclose the sealed documents to defense counsel without disturbing the sealed nature of the documents. Moreover, the investigation involves multiple victims including a minor. *Id.* The Government simultaneously seeks a protective order relating to the minor victim pursuant to 18 U.S.C. §

1 3509(d)(3)(B)(ii), as well as broader prohibitions to ensure that Defendant himself
2 diligently protects the disclosure of sealed information. *Id.* at 3, 5–6.

3 Defendant Robert Samuel Tillman (01) opposes the motion. ECF No. 34.
4 First, he objects to the Government’s request that he and counsel refer to the minor
5 by her initials or pseudonym during proceedings. *Id.* at 2. Second, he objects to the
6 Government’s request that “any reference to the content of the Protected Discovery”
7 be filed under seal. *Id.* (citing ECF No. 28 at 6). He cites to the Sixth Amendment
8 right to a public trial, arguing that papers filed with the court “are an integral party
9 of the trial process and fall well within the expansive ambit of the public trial right.”
10 *Id.* at 3.

11 The Court rejects Defendant’s first argument, determining that referring to a
12 minor—whose name is not in the public record—by her initials or pseudonym does
13 not intrude upon Defendant’s constitutional rights. Without belaboring the
14 compelling privacy interests of the minor, such a nonintrusive protection may
15 actually prevent the need to close entire proceedings, which is undoubtedly a more
16 stringent restriction. *See Maryland v. Craig*, 497 U.S. 836 (1990) (noting that
17 protecting minor victims from further trauma and embarrassment is a compelling
18 interest and listing cases); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596,
19 608–09 (1982) (noting that safeguarding the physical and psychological well-being
20 of a minor is a compelling interest).

1 The Court now turns to Defendant's second argument. The cases that
2 Defendant cites involve closures of proceedings or the sealing of documents
3 whereby the *press* asserts First Amendment rights and the courts must balance those
4 rights against the defendant's. *See, e.g., Associated Press v. U.S. Dist. Court*, 705
5 F.2d 1143, 1145 (9th Cir. 1983) ("[T]he public and press have a first amendment
6 right of access to pretrial documents in general.").

7 Nonetheless, the Court recognizes Defendant's assertion of his Sixth
8 Amendment right to a public trial. "The public trial guarantee was created for the
9 benefit of defendants." *United States v. Sherlock*, 962 F.2d 1349, 1356 (9th Cir.
10 1989) (citing *Waller v. Georgia*, 467 U.S. 39, 46 (1984)). "Openness in court
11 proceedings may improve the quality of testimony, induce unknown witnesses to
12 come forward with relevant testimony, cause all trial participants to perform their
13 duties more conscientiously, and generally give the public an opportunity to observe
14 the judicial system." *Gannett Co. v. DePasquale*, 443 U.S. 368, 383 (1979). This
15 right is not absolute "and must give way in some cases to other interests essential
16 to the fair administration of justice." *Sherlock*, 962 F.2d at 1356.

17 In *Waller*, the Supreme Court adopted the following test for determining
18 when a defendant's right to a public trial is outweighed by other considerations:
19 (1) a party seeking to close a court proceeding (or seal documents) must advance
20 an overriding interest that is likely to be prejudiced; (2) the restriction must be no

1 broader than necessary to protect that interest; (3) the trial court must consider
2 reasonable alternatives to closing the proceeding (or sealing documents); and
3 (4) the trial must make findings adequate to support the restriction. 467 U.S. at 48.

4 Here, the Government does not seek to totally or partially close any
5 proceedings including trial. *See id.* (involving total closures); *Sherlock*, 962 F.2d at
6 1357 (involving partial closures). Rather, it requests that the parties and witnesses
7 file under seal “any reference to the content of the Protected Discovery.” ECF No.
8 28 at 6. The Government fails to define what constitutes “Protected Discovery” and
9 Defendant “presumes” it refers to any discovery produced by the Government. ECF
10 No. 34 at 6. Instead, the Court believes it was a typo for “Protective Discovery,”
11 which the Government defines as the search warrants that are currently sealed, as
12 well as any additional search warrants that will be obtained and filed under seal.
13 ECF No. 28-1 at 4.

14 As Defendant did not object to the Government’s request regarding the sealed
15 search warrants, the Court gathers that Defendant would likely withdraw this
16 objection in light of this information. Nonetheless, assuming without deciding that
17 Defendant’s right to a public trial encompasses pretrial documents as well, the Court
18 finds that the Government’s overriding interest in protecting ongoing criminal
19 investigations necessitates a short-term sealing of the search warrants relating to
20 this matter. No other alternatives would protect the contents of those search

1 warrants. When appropriate, the sealed documents may be unsealed upon request.
2 Thus, the Court finds that this request does not impinge upon Defendant's right to
3 a public trial, and that sealing documents referencing the contents of the sealed
4 search warrants is necessary until shown otherwise.

5 Accordingly, **IT IS HEREBY ORDERED** that the United States' Motion to
6 Disclose Pre-Indictment Pleadings for Discovery But Not Unsealing and for
7 Protective Order, **ECF No. 28**, is **GRANTED**.

8 The Court finds that a protective order pursuant to 18 U.S.C. § 3509(d) is
9 necessary in this case. Accordingly, the Court enters the following protective order:

10 **IT IS FURTHER ORDERED** that the privacy protection measures
11 mandated by 18 U.S.C. § 3509(d), when a case involves a person under the age of
12 eighteen years who is alleged to be a victim of a crime or a witness to a crime
13 committed against another person, apply to this case, thus;

14 **IT IS FURTHER ORDERED** that all persons acting in this case in a
15 capacity described in 18 U.S.C. § 3509(d)(1)(B), shall follow and abide by the
16 privacy protections of 18 U.S.C. § 3509(d)(1) and (2) as follows:

17 (d) Privacy protection.—

18 (1) Confidentiality of information.—

19 (A) A person acting in a capacity described in
20 subparagraph (B) in connection with a criminal
proceeding shall—

1 (i) keep all documents that disclose the
2 name or any other information
3 concerning a child in a secure place to
4 which no person who does not have
5 reason to know their contents has access;
6 and

7 (ii) disclose documents described in clause
8 (i) or the information in them that
9 concerns a child only to persons who, by
10 reason of their participation in the
11 proceeding, have reason to know such
12 information.

13 (B) Subparagraph (A) applies to—

14 (i) all employees of the Government
15 connected with the case, including
16 employees of the Department of Justice,
17 any law enforcement agency involved in
18 the case, and any person hired by the
19 Government to provide assistance in the
20 proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the
defendant, including the attorney for the
defendant and persons hired by the
defendant or the attorney for the
defendant to provide assistance in the
proceeding; and

(iv) members of the jury.

(2) Filing under seal.—All papers to be filed in court that
disclose the name of or any other information
concerning a child shall be filed under seal without
necessity of obtaining a court order. The person who

1 makes the filing shall submit to the clerk of the
2 court—

3 (A) the complete paper to be kept under seal; and

4 (B) the paper with the portions of it that disclose
5 the name of or other information concerning a
6 child redacted, to be placed in the public
7 record.

8 18 U.S.C. § 3509(d)(3)(B).

9 **IT IS FURTHER ORDERED** that any alleged minor victim will be referred
10 to either by initials or a pseudonym, whichever is agreed upon by counsel for the
11 United States and Defendant. Counsel shall be consistent in their use of the
12 identifier selected. The parties shall prepare their witnesses and instruct them to
13 refer to the alleged minor victims only by using the agreed pseudonyms (e.g., “Jane
14 Doe 1,” “Jane Doe 2,” etc.), rather than their names, in opening statements and in
15 closing arguments.

16 **IT IS FURTHER ORDERED** that the United States is permitted to disclose
17 the following search warrants that are all currently sealed by the Court (hereinafter
18 “Protected Discovery”) to counsel for the above referenced Defendant pursuant to
19 its discovery obligations:

20 the search warrant in case number **1-18-mj-04168-MKD**;

the search warrant in case number **4-18-mj-07191-MKD**;

the search warrant in case number **4:18-mj-07193-MKD**;

1 the search warrant in case number **1:19-mj-04012-MKD**; and
2 **any additional search warrants obtained that are filed under seal and**
3 **would constitute discovery in this case.**

4 The Court finds that the need for confidentiality of information contained in the
5 search warrants outweighs the public's interest in disclosure. Accordingly,
6 applications, orders, and the warrants themselves shall otherwise remain sealed by
7 the Court.

8 **IT IS FURTHER ORDERED** that:

- 9 **1.** The Government will provide discovery materials (including Protected
10 Discovery) on an ongoing basis to defense counsel;
- 11 **2.** Defense counsel may possess but not copy (excluding the production
12 of necessary working copies) the discovery materials, including sealed
13 documents;
- 14 **3.** Defense counsel may show to, and discuss with, Defendant the
15 discovery material, including sealed documents;
- 16 **4.** Defense counsel shall not provide original or copies of discovery
17 materials directly to Defendant;
- 18 **5.** Defense counsel shall not otherwise provide original or copies of the
19 discovery material to any other person, including subsequently
20 appointed or retained defense counsel, but excluding any staff of

1 defense counsel or investigator and/or expert engaged by defense
2 counsel, who will also be bound by the terms and conditions of the
3 protective order;


4 **6.** The Government, defense counsel, and witnesses may reference the
5 existence and content of sealed discovery material in open and closed
6 court proceedings relevant to the Indictment in case number 1:19-cr-
7 06007-SMJ; provided however, any reference to the contents of
8 Protected Discovery shall be filed under seal.

9 **7.** The parties may seek relief from this Order for good cause shown.

10 **IT IS FURTHER ORDERED** that counsel shall remind all persons
11 providing assistance on this case of these obligations.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
13 provide copies to all counsel.

14 **DATED** this 19th day of February 2019.

15 
16 SALVADOR MENDEZ, JR.
United States District Judge